

MT LEGISLATIVE HISTORY

Chapter 99 19 91

Bill H 69 S \_\_\_\_\_

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Jan 11 ☒ C

Hearing Date(s) Jan 30 ☒ C

\_\_\_\_\_ ☐ C

Feb 04 ☒ C

\_\_\_\_\_ ☐ C

\_\_\_\_\_ ☐ C

\_\_\_\_\_ ☐ C

\_\_\_\_\_ ☐ C

Date Out Jan 11 ☒ C

Feb 04 ☒ C

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Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

|      |                                          |    |    |
|------|------------------------------------------|----|----|
|      | TRANSMITTED TO SENATE                    |    |    |
| 2/01 | FIRST READING                            |    |    |
| 2/01 | REFERRED TO LABOR & EMPLOYMENT RELATIONS |    |    |
| 2/07 | HEARING                                  |    |    |
| 3/28 | COMMITTEE REPORT—BILL CONCURRED          |    |    |
| 4/04 | 2ND READING CONCUR MOTION FAILED         | 25 | 25 |
| 4/04 | MOTION FAILED TO INDEFINITELY POSTPONE   |    |    |
|      | ON 2ND READING                           | 23 | 27 |
| 4/05 | 2ND READING CONCURRED                    | 27 | 23 |
| 4/06 | 3RD READING CONCURRED                    | 27 | 21 |
|      | RETURNED TO HOUSE                        |    |    |
| 4/11 | SIGNED BY SPEAKER                        |    |    |
| 4/11 | SIGNED BY PRESIDENT                      |    |    |
| 4/11 | TRANSMITTED TO GOVERNOR                  |    |    |
| 4/15 | VETOED                                   |    |    |

## HB 69 INTRODUCED BY WHALEN

REVISE ESTABLISHMENT, NUMBER, SALARY,  
ELECTION OF MUNICIPAL COURT JUDGES

|       |                                            |    |    |
|-------|--------------------------------------------|----|----|
| 12/31 | INTRODUCED                                 |    |    |
| 12/31 | REFERRED TO JUDICIARY                      |    |    |
| 1/07  | FIRST READING                              |    |    |
| 1/11  | HEARING                                    |    |    |
| 1/12  | COMMITTEE REPORT—BILL PASSED AS AMENDED    |    |    |
| 1/15  | 2ND READING PASSED                         | 79 | 21 |
| 1/17  | 3RD READING PASSED                         | 78 | 21 |
|       | TRANSMITTED TO SENATE                      |    |    |
| 1/18  | FIRST READING                              |    |    |
| 1/18  | REFERRED TO JUDICIARY                      |    |    |
| 1/30  | HEARING                                    |    |    |
| 2/05  | COMMITTEE REPORT—BILL CONCURRED AS AMENDED |    |    |
| 2/09  | 2ND READING CONCURRED AS AMENDED           | 27 | 19 |
| 2/11  | 3RD READING CONCURRED                      | 32 | 16 |
|       | RETURNED TO HOUSE WITH AMENDMENTS          |    |    |
| 3/11  | 2ND READING AMENDMENTS CONCURRED           | 77 | 22 |
| 3/12  | 3RD READING AMENDMENTS CONCURRED           | 80 | 18 |
| 3/16  | SIGNED BY SPEAKER                          |    |    |
| 3/16  | SIGNED BY PRESIDENT                        |    |    |
| 3/18  | TRANSMITTED TO GOVERNOR                    |    |    |
| 3/20  | SIGNED BY GOVERNOR                         |    |    |
|       | CHAPTER NUMBER 99                          |    |    |

EFFECTIVE DATE: 7/01/91

## HB 70 INTRODUCED BY STRIZICH

STATE JAIL STANDARDS  
BY REQUEST OF ADULT AND JUVENILE DETENTION,  
JOINT INTERIM SUBCOMMITTEE ON

|      |                                         |    |    |
|------|-----------------------------------------|----|----|
| 1/03 | INTRODUCED                              |    |    |
| 1/03 | FISCAL NOTE REQUESTED                   |    |    |
| 1/03 | REFERRED TO JUDICIARY                   |    |    |
| 1/07 | FIRST READING                           |    |    |
| 1/11 | FISCAL NOTE RECEIVED                    |    |    |
| 1/15 | FISCAL NOTE PRINTED                     |    |    |
| 1/17 | HEARING                                 |    |    |
| 1/21 | COMMITTEE REPORT—BILL PASSED AS AMENDED |    |    |
| 1/24 | 2ND READING PASSED                      | 74 | 24 |
| 1/24 | TAKEN FROM ENGROSSING AND               |    |    |
|      | REFERRERRED TO APPROPRIATIONS           |    |    |
| 3/11 | HEARING                                 |    |    |
| 3/22 | TABLED IN COMMITTEE                     |    |    |

HOUSE BILL NO. 69  
INTRODUCED BY WHALEN

IN THE HOUSE

|                   |                                                                 |
|-------------------|-----------------------------------------------------------------|
| DECEMBER 31, 1990 | INTRODUCED AND REFERRED TO COMMITTEE<br>ON JUDICIARY.           |
| JANUARY 7, 1991   | FIRST READING.                                                  |
| JANUARY 12, 1991  | COMMITTEE RECOMMEND BILL<br>DO PASS AS AMENDED. REPORT ADOPTED. |
| JANUARY 14, 1991  | PRINTING REPORT.                                                |
| JANUARY 15, 1991  | SECOND READING, DO PASS.                                        |
| JANUARY 16, 1991  | ENGROSSING REPORT.                                              |
| JANUARY 17, 1991  | THIRD READING, PASSED.<br>AYES, 78; NOES, 21.                   |
|                   | TRANSMITTED TO SENATE.                                          |

IN THE SENATE

|                   |                                                                            |
|-------------------|----------------------------------------------------------------------------|
| JANUARY 17, 1991  | INTRODUCED AND REFERRED TO COMMITTEE<br>ON JUDICIARY.                      |
| JANUARY 18, 1991  | FIRST READING.                                                             |
| FEBRUARY 5, 1991  | COMMITTEE RECOMMEND BILL BE<br>CONCURRED IN AS AMENDED. REPORT<br>ADOPTED. |
| FEBRUARY 9, 1991  | SECOND READING, CONCURRED IN AS<br>AMENDED.                                |
| FEBRUARY 11, 1991 | THIRD READING, CONCURRED IN.<br>AYES, 32; NOES, 16.                        |
|                   | RETURNED TO HOUSE WITH AMENDMENTS.                                         |

IN THE HOUSE

|                |                                             |
|----------------|---------------------------------------------|
| MARCH 11, 1991 | RECEIVED FROM SENATE.                       |
|                | SECOND READING, AMENDMENTS<br>CONCURRED IN. |

MARCH 12, 1991

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 69

INTRODUCED BY WHALEN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROVISIONS REGARDING THE ESTABLISHMENT, NUMBER, SALARY AND ELECTION OF MUNICIPAL COURT JUDGES AND THE ADMINISTRATION OF AND APPEAL FROM MUNICIPAL COURTS; AMENDING SECTIONS 3-6-101, 3-6-102, 3-6-201, 3-6-203, AND 3-6-301, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 3-6-101, MCA, is amended to read:

"3-6-101. Establishment of the court. (1) ~~All cities in the state of Montana with a population of 10,000 or more, according to the last federal census,~~ A city may have a court, known as the municipal court of the city of (designating the name of the city) of the state of Montana. The court ~~shall~~ must be a court of record. The municipal court shall assume continuing jurisdiction over all pending city court cases in the city in which the municipal court is established.

(2) ~~The provisions of this chapter apply only after a city may have a municipal court only if the governing body of the city has elected elects by a two-thirds majority vote to adopt them~~ the provisions of this chapter by ordinance

and, in the ordinance, ~~has-provided~~ provides the manner in which and time when the municipal court is to be established and is to assume continuing jurisdiction over all pending city court cases. The ordinance must be consistent with the provisions of this chapter."

**Section 2.** Section 3-6-102, MCA, is amended to read:

"3-6-102. Abolition of city court. (1) In cities in which a municipal court is established, the office of city judge is ~~hereby~~ abolished.

(2) A city judge whose office is abolished shall serve as a municipal court judge in the same city in which he served as city judge for the remainder of his term and until the office of municipal court judge is filled by election, as provided under 3-6-201 and 3-6-202.

**Section 3.** Section 3-6-201, MCA, is amended to read:

"3-6-201. ~~Election~~ Number of judges -- election -- term of office. (1) The governing body of a city shall determine by ordinance the number of judges required to operate the municipal court.

~~(2) One judge of each~~ A municipal court judge must ~~shall~~ be elected at the general city election, as provided in 13-1-104. The judge's term ~~shall--commence~~ commences on the first Monday in January following the election. The judge shall hold office for the term of 4 years and until his successor is elected and qualified.

1        ~~f2~~(3) All elections of municipal court judges are  
 2 governed by the laws applicable to the election of  
 3 ~~nonpartisan-city-officials~~ district court judges."

4        **Section 4.** Section 3-6-203, MCA, is amended to read:

5        "3-6-203. Salary. The salary of the municipal court  
 6 judge ~~shall~~ must be set by city ordinance or resolution and  
 7 ~~shall--be~~ is payable monthly by the city treasurer. Actual  
 8 and necessary expenses for the municipal court judge ~~shall~~  
 9 ~~be--the travel~~ are expenses, as defined and provided in  
 10 2-18-501 through 2-18-503, incurred in the performance of  
 11 his official duties."

12        **Section 5.** Section 3-6-301, MCA, is amended to read:

13        "3-6-301. Clerk of the court ~~-- administrative~~  
 14 ~~expenses.~~ The city municipal court judge shall appoint a  
 15 clerk of the city-in-which-said-court-is-located-shall-be-ex  
 16 officio--clerk-of-such court. The governing body of the city  
 17 shall set the salary of the clerk and provide for other  
 18 necessary expenses that may be incurred in operating the  
 19 court."

20        **NEW SECTION. Section 6.** Appeal to district court --  
 21 record on appeal. (1) A party may appeal to district court  
 22 from a municipal court judgment or order. The appeal is  
 23 confined to review of the record and questions of law,  
 24 subject to the supreme court's rulemaking and supervisory  
 25 authority.

1        (2) The record on appeal to district court consists of  
 2 an electronic recording or stenographic transcription of a  
 3 case tried, together with all papers filed in the action.

4        (3) The district court may affirm, reverse, or amend  
 5 any appealed order or judgment and may direct the proper  
 6 order or judgment to be entered or direct that a new trial  
 7 or further proceeding be had in the court from which the  
 8 appeal was taken.

9        **NEW SECTION. Section 7.** Codification instruction.  
 10 [Section 6] is intended to be codified as an integral part  
 11 of Title 3, chapter 6, and the provisions of Title 3,  
 12 chapter 6, apply to [section 6].

13        **NEW SECTION. Section 8.** Effective date. [This act] is  
 14 effective July 1, 1991.

-End-

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM  
 FINAL COMMITTEE REPORT OF REFERRED BILLS  
 COMMITTEE--(H) JUDICIARY

PAGE NBR..... 82  
 RUN TIME .....13:25  
 RUN DATE.... 06/04/91

CHAIRMAN--BILL STRIZICH  
 NORMAL SCHEDULE==> SITE: ROOM 312-2

DAYS: M,T,W,T,F

TIME: 8:00 A.M.

SECRETARY-JEANNE DOMME

| --BILL NO--    | REFER DATE | HEARING DATE | CONSIDERATION DATES                                                         | COMMITTEE ACTION | REREFERRED TO COMM | DATE OUT |
|----------------|------------|--------------|-----------------------------------------------------------------------------|------------------|--------------------|----------|
| HB0024         | 12/27      | 1/14         |                                                                             | PASS AS AMENDED  |                    | 1/18     |
| CODY, DOROTHY  |            |              | ALLOW CONSIDERATION OF AGE, MARITAL STATUS, AND RELIGION IN ADOPTIONS       |                  |                    |          |
| HB0025         | 12/27      | 1/14         |                                                                             | DO PASS          |                    | 1/15     |
| CODY, DOROTHY  |            |              | REQUIRE 72-HOUR RELINQUISHMENT PERIOD IN ADOPTIONS                          |                  |                    |          |
| HB0026         | 12/27      | 1/14         |                                                                             | PASS AS AMENDED  |                    | 1/21     |
| CODY, DOROTHY  |            |              | REQUIRE HOMESTUDY AND COUNSELING IN PRIVATE PLACEMENT ADOPTIONS             |                  |                    |          |
| HB0036         | 12/27      | 1/08         | <i>reconsidered, tabled 1/10</i>                                            | TABLED ON 01/08  |                    |          |
| CROMLEY, BRENT |            |              | EXEMPT PARALEGALS AND LEGAL ASSISTANTS FROM REGISTRATION AS PROCESS SERVERS |                  |                    |          |
| HB0042         | 12/29      | 1/10         |                                                                             | DO PASS          |                    | 1/11     |
| COBB, JOHN     |            |              | DISCRETIONARY STATEMENT OF INTENT FOR BILL GRANTING RULEMAKING AUTHORITY    |                  |                    |          |
| HB0043         | 12/29      | 1/10         |                                                                             | PASS AS AMENDED  |                    | 1/11     |
| COBB, JOHN     |            |              | CLARIFY GRANDPARENT VISITATION RIGHTS FOR CHILDREN IN FOSTER CARE           |                  |                    |          |
| HB0069         | 12/31      | 1/11         |                                                                             | PASS AS AMENDED  |                    | 1/12     |
| WHALEN, TIM    |            |              | REVISE ESTABLISHMENT, NUMBER, SALARY, ELECTION OF MUNICIPAL COURT JUDGES    |                  |                    |          |
| HB0070         | 1/03       | 1/17         |                                                                             | PASS AS AMENDED  | APPROPRIATIONS     | 1/21     |
| STRIZICH, BILL |            |              | STATE JAIL STANDARDS                                                        |                  |                    |          |
| HB0071         | 1/03       | 1/17         |                                                                             | DO PASS          |                    | 1/21     |
| STRIZICH, BILL |            |              | REQUIRE COURTS TO ORDER FINANCIALLY ABLE INMATES TO PAY INCARCERATION COSTS |                  |                    |          |
| HB0072         | 1/03       | 1/17         |                                                                             | PASS AS AMENDED  |                    | 1/18     |
| RICE, JIM      |            |              | EXPEDITE CRIMINAL PROSECUTION                                               |                  |                    |          |
| HB0073         | 1/03       | 2/07         |                                                                             | TABLED ON 02/08  | APPROPRIATIONS     |          |
| RICE, JIM      |            |              | APPROPRIATE PORTION OF LOTTERY PROCEEDS TO FUND JUVENILE DETENTION PROGRAMS |                  |                    |          |

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 11, 1991,  
at 8 a.m.

#### ROLL CALL

##### Members Present:

Bill Strizich, Chairman (D)  
Vivian Brooke, Vice-Chairman (D)  
Arlene Becker (D)  
William Boharski (R)  
Dave Brown (D)  
Robert Clark (R)  
Paula Darko (D)  
Budd Gould (R)  
Royal Johnson (R)  
Vernon Keller (R)  
Thomas Lee (R)  
Bruce Measure (D)  
Charlotte Messmore (R)  
Linda Nelson (D)  
Jim Rice (R)  
Jessica Stickney (D)  
Howard Toole (D)  
Tim Whalen (D)  
Diana Wyatt (D)

Members Excused: Rep. Russell

Staff Present: John MacMaster Legislative Council Staff Attorney  
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

#### HEARING ON HB #113 REVISE DEFINITION OF WITHOUT CONSENT FOR RAPE

##### Presentation and Opening Statement by Sponsor:

REP. LEE stated this bill is to enact and define the term "force" as it relates to sexual intercourse without consent and deviate sexual conduct.



the rest of the bill as is. John MacMaster said the committee could go into the intimidation statute and amend it to say if a person intimidates somebody into doing something, this is the penalty, and if that something is to submit to a sexual act, the penalty will be greatly enhanced.

REP. JOHNSON said he felt the people who attempted to put this statute together understood it very well. Those of us who are not in the legal fraternity can't understand it as well and we should pass the law as it was written.

REP. BOHARSKI stated, "We are dealing with some of the most emotional cases to come into a court room. The committee should spend the extra time to get the language in the bill exactly the way we want it in order to keep a prosecutor from swaying a jury one way or the other."

Motion: REP. BOHARSKI moved to amend HB 113 by deleting the words "another crime by the defender" and insert the words "a forcible felony" on line 23.

Discussion:

REP. BROOKE asked Mr. Conner if they agree to this proposed amendment. Mr. Conner said yes.

Motion: Motion carried.

Motion/Vote: REP. TOOLE MOVED HB 113 DO PASS AS AMENDED. Motion carried.

HEARING ON HB #69

REVISE ESTABLISHMENT, NUMBER, SALARY, ELEC. OF MUNI. CT. JUDGES

Presentation and Opening Statement by Sponsor:

REP. WHALEN stated this bill provides a mechanism for Municipal Courts around the state.

Proponents' Testimony:

Larry Herman, City Judge of the City of Laurel, gave written testimony for HB #69. EXHIBIT 3

Opponents' Testimony: NONE

Information Testimony:

Patricia Bradley, Lobbyist for the Montana Magistrates Association, gave written testimony for HB #69. EXHIBIT 4

Questions From Committee Members:

REP. CLARK asked Mr. Herman if the Court of Record in the State of Montana requires the defendants to be represented by an attorney? Mr. Herman said no. Anyone can represent themselves in any court. In Municipal Court and City Court defendants represent themselves 90 - 95% of the time.

REP. MESSMORE asked Mr. Herman what type of cases does a Municipal Court hear? Mr. Herman said DUI's, reckless driving, assault, domestic abuse, and civil cases up to \$3500.00.

REP. BOHARSKI asked Mr. Herman if a Municipal Court Judge has to be an attorney? Mr. Herman said yes he does.

Closing by Sponsor:

REP. WHALEN stated that this bill is optional. Cities do not have to establish a Municipal Court Judge. It provides some incentive for a city to establish a Municipal Court Judge.

EXECUTIVE ACTION ON HB #69.

Motion: REP. WHALEN MOVED HB 69 DO PASS.

Motion/Vote: REP. WHALEN moved to amend HB 69 by changing the time of election to be in the same manner as Judicial Court elections, but the timing of election can be with all the Municipal elections. Motion carried.

Motion: REP. DARKO MOVED HB 69 DO PASS AS AMENDED.

Discussion:

REP. BOHARSKI asked John MacMaster if section 2 sub 2 takes away our concern about a non-attorney serving as judge in a District Court? Mr. MacMaster said the section states as city judge whose office is abolished shall serve as municipal court judge. I would recommend amending line 10 to insert "if qualified" after the word shall.

Motion: REP. BOHARSKI moved to amend HB 69 with John MacMaster's amendment.

REP. MEASURE stated if amended that way it would kick a sitting city judge out in the middle of his term and you put a city in position of holding election in mid-term.

Motion: REP. MEASURE made a substitute motion to amend HB 69 by providing language that if a City Judge office is abolished he shall serve as a city judge until such time as his term expires,

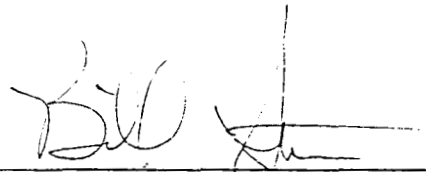
at which time a Municipality that has adopted a Municipal Court judge position will hold an election to elect a Municipal Court Judge qualified under the provision of this section.

Vote: Motion carried 16 to 4. EXHIBIT 5

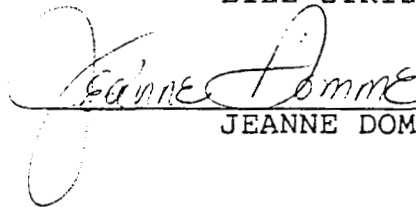
Motion: REP. DARKO MOVED HB 69 DO PASS AS AMENDED. Motion carried 16 to 4. EXHIBIT 6

ADJOURNMENT

Adjournment: 9:40 a.m.



BILL STRIZICH, Chairman



JEANNE DOMME, Secretary

BS/jmd

## HOUSE OF REPRESENTATIVES

## JUDICIARY COMMITTEE

ROLL CALL

DATE 1-11-91

| NAME                           | PRESENT | ABSENT | EXCUSED |
|--------------------------------|---------|--------|---------|
| REP. VIVIAN BROOKE, VICE-CHAIR | /       |        |         |
| REP. ARLENE BECKER             | /       |        |         |
| REP. WILLIAM BOHARSKI          | /       |        |         |
| REP. DAVE BROWN                | /       |        |         |
| REP. ROBERT CLARK              | /       |        |         |
| REP. PAULA DARKO               | /       |        |         |
| REP. BUDD GOULD                | /       |        |         |
| REP. ROYAL JOHNSON             | /       |        |         |
| REP. VERNON KELLER             | /       |        |         |
| REP. THOMAS LEE                | /       |        |         |
| REP. BRUCE MEASURE             | /       |        |         |
| REP. CHARLOTTE MESSMORE        | /       |        |         |
| REP. LINDA NELSON              | /       |        |         |
| REP. JIM RICE                  | /       |        |         |
| REP. ANGELA RUSSELL            |         |        | /       |
| REP. JESSICA STICKNEY          | /       |        |         |
| REP. HOWARD TOOLE              | /       |        |         |
| REP. TIM WHALEN                | /       |        |         |
| REP. DIANA WYATT               | /       |        |         |
| REP. BILL STRIZICH, CHAIRMAN   | /       |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |
|                                |         |        |         |

5:05 pm  
1/11/91  
lme

## STANDING COMMITTEE REPORT

January 11, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 69 (first reading copy -- white) do pass as amended.

Signed:   
Bill Strizich, Chairman

And, that such amendments read:

1. Page 2, line 4.  
Following: "cases."  
Insert: "If a city judge is not an attorney and his office is abolished because a municipal court is established, the ordinance must provide that the time when the establishment of the municipal court takes effect is the date on which the municipal court judge elected at the next election held under 3-6-201 begins his term of office."
2. Page 2, line 10.  
Strike: "A"  
Insert: "Except as provided in 3-6-101(2), a"
3. Page 2, line 22.  
Following: "13-1-104"  
Insert: "(2)"
4. Page 3, line 1.  
Strike: "All"  
Insert: "Except as provided in subsection (2), all"

TESTIMONY HOUSE BILL 69

EXHIBIT 3

DATE 1-11-91

HB 69

LARRY D. HERMAN

My name is Larry Herman. I am the incumbent city judge of the City of Laurel. I am a former mayor, alderman, and city attorney of the City of Laurel. I am a practicing attorney and the vice chairman of the commission on courts of limited jurisdiction. I am appearing in support of House Bill 69.

The municipal court is not a new court. It was first provided for by the legislature in 1935 as a court of record in cities. There is present only one municipal court established in the state which is in Missoula. The cities have generally not adopted the municipal court because of the costs that were associated with maintaining a court reporter. Also with the passage of the 1972 constitution there was some concern whether or not the appeal from the municipal court was as trial anew. This bill addresses these problems. The passage of the bill will prove to be beneficial to the cities and their respective counties and district courts.

The problem associated with the cost of a court reporter for limited courts of record has been eliminated with the advent of the tape recorder and other electronic media. A record can now be maintained in the municipal court by means of a relatively inexpensive electronic recorder. This is the method that is now being used in the Missoula Municipal court.

The problem associated with the appeal from a limited court of record to the district court has been addressed in this bill. The record on appeal will be confined to the record and questions of law and not tried a second time in the district court. The bill provides the district court with sufficient latitude to provide justice and could if the appeal warranted it order a new trial. The district court would be able to hear appeals on orders of the municipal court. Under present law the only recourse is to seek a writ of supervisory control from the supreme court or a writ of mandamus.

By confining the appeal to the record, the municipal court will not be used as a discovery court and then appealed to the district court to be tried anew.

The saving to the cities will be in the elimination of the additional expenses incurred in a trial anew, that is excessive police hours to attend trial (usually overtime), city attorney or prosecutors time to try cases a second time, public defender hours to try a case a second time, witness fees, and jury costs. The district court's case load will be eased because the pressure to try misdemeanors within 6 months will not clog the dockets. The district court will be able to dispose of the appeals from the municipal court and devote more time to pressing felony and civil matters.

Under this bill the cities as they grow will be able to increase the number of judges needed to operate the municipal court. Presently the cities can have only one city or municipal judge. This allows for growth and a more efficient court in the large cities. The courts in some cities are under heavy pressure due to their case loads, this in turn places

pressure upon the district courts. This bill will save time for city/municipal judges, district court judges, prosecutors, and public defenders.

This bill eliminates the provision that the clerk of the city must be the clerk of court. This provision had applied to both city and municipal courts. It certainly was not a duty which most city clerks wanted in light of all of their other duties. However the bill does not prohibit a city clerk from being the clerk of the court.

This bill does not increase or decrease the jurisdiction of the municipal courts. It remains the same as city courts. The difference being that the municipal court being a court of record and is appealable on the record. Nor does this bill change the qualifications for a municipal court judge.

Local government, in particular in the more densely populated counties, need a means of operating their courts in a more economical manner and should not be required to wait 5 years or even 2 years when an immediate result can be had under this bill. The establishment of the municipal court under this bill will provide immediate relief to the cities with a high volume case load and to their respective counties and district courts through the saving of pure dollars and cents. This bill makes good sense.

This bill makes good dollars and cents for both the cities and their respective counties. I would urge this committee to give it a close review in light of the savings by the elimination of man hours of the police, prosecuting attorneys, and district court judges needed in handling two trials instead of one.

Keep in mind that this bill does not mandate a municipal court, but provides a means a city may use to reduce the costs of its courts and the appeals to the district court. This bill does make good sense, and I urge this committee to recommend its passage and approval.

January 11, 1991 BEFORE THE HOUSE JUDICIARY COMMITTEE

Concerning HB 69, An act revising provisions regarding the establishment of municipal court judges.

Testimony of Patricia Bradley, Lobbyist for the Montana Magistrates Assn.

Mr. Chairman, Members of Committee:

The Montana Magistrates Assn. is neither for nor against this bill, but view it as perhaps premature at this time, and possibly unnecessary eventually, for the following reason:

New Section 6 of this bill calls for the record on appeal to consist of an electronic recording or stenographic transcription of the case tried. We are aware of potential legislation being considered for filing this session that would provide for all courts of limited jurisdiction to use electronic recordings, such as courts now use in Small Claims matters, and which are reviewed on appeal. This would allow Justice and City courts the same appeal process, without trial de novo, as is being proposed in this legislation, HB 69.

We contend it would be more expensive for cities to operate municipal courts rather than city courts, but, of course, that option rests with the city.

We suggest holding any action on HB 69 until the aforementioned legislation can be reviewed to compare the merits of the apparent primary intent of Bill 69, the appeal process.

Thank you.

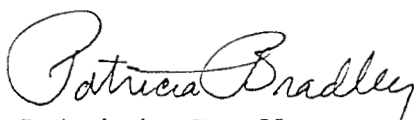
  
Patricia Bradley, MMA



EXHIBIT 5DATE 1-11-91

HOUSE OF REPRESENTATIVES

HB 69

## JUDICIARY COMMITTEE

## ROLL CALL VOTE

DATE 1-11-91 BILL NO. HB 69 NUMBER \_\_\_\_\_MOTION: Rep. Darko moved To Pass As Amended

| NAME                           | AYE | NO             |
|--------------------------------|-----|----------------|
| REP. VIVIAN BROOKE, VICE-CHAIR | /   |                |
| REP. ARLENE BECKER             | /   |                |
| REP. WILLIAM BOHARSKI          | /   |                |
| REP. DAVE BROWN                | /   |                |
| REP. ROBERT CLARK              |     | /              |
| REP. PAULA DARKO               | /   |                |
| REP. BUDD GOULD                |     | /              |
| REP. ROYAL JOHNSON             | /   |                |
| REP. VERNON KELLER             |     | /              |
| REP. THOMAS LEE                | /   | <del>yes</del> |
| REP. BRUCE MEASURE             |     | /              |
| REP. CHARLOTTE MESSMORE        | /   |                |
| REP. LINDA NELSON              | /   |                |
| REP. JIM RICE                  | /   |                |
| REP. ANGELA RUSSELL            | /   |                |
| REP. JESSICA STICKNEY          | /   |                |
| REP. HOWARD TOOLE              | /   |                |
| REP. TIM WHALEN                | /   |                |
| REP. DIANA WYATT               | /   |                |
| REP. BILL STRIZICH, CHAIRMAN   | /   |                |
| TOTAL                          | 16  | 4              |

EXHIBIT 6  
DATE 1-11-91  
HB 69

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 1-11-91 BILL NO. HB 69 NUMBER \_\_\_\_\_

MOTION: Rep. Measure moved a substitute motion to  
amend 69.

NAME AYE NO

|                                |    |   |
|--------------------------------|----|---|
| REP. VIVIAN BROOKE, VICE-CHAIR |    | / |
| REP. ARLENE BECKER             | /  |   |
| REP. WILLIAM BOHARSKI          |    | / |
| REP. DAVE BROWN                | /  |   |
| REP. ROBERT CLARK              |    | / |
| REP. PAULA DARKO               | /  |   |
| REP. BUDD GOULD                | /  |   |
| REP. ROYAL JOHNSON             | /  |   |
| REP. VERNON KELLER             | /  |   |
| REP. THOMAS LEE                | /  |   |
| REP. BRUCE MEASURE             | /  |   |
| REP. CHARLOTTE MESSMORE        | /  |   |
| REP. LINDA NELSON              | /  |   |
| REP. JIM RICE                  |    | / |
| REP. ANGELA RUSSELL            | /  |   |
| REP. JESSICA STICKNEY          | /  |   |
| REP. HOWARD TOOLE              | /  |   |
| REP. TIM WHALEN                | /  |   |
| REP. DIANA WYATT               | /  |   |
| REP. BILL STRIZICH, CHAIRMAN   | /  |   |
| TOTAL                          | 16 | 4 |

House Judiciary

BILL NO.

69

DATE \_\_\_\_\_

Jan. 11, 1991

SPONSOR

Ref. Whalen

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM  
 FINAL COMMITTEE REPORT OF REFERRED BILLS  
 COMMITTEE--(S) JUDICIARY

PAGE NBR..... 2  
 RUN TIME .....09:18  
 RUN DATE.... 05/20/91

CHAIRMAN--RICHARD PINSONEAULT  
 NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: M,T,W,T,F

TIME: 10:00 A.M.

SECRETARY--JOANN BIRD

| BILL NO         | REFER DATE | HEARING DATE | CONSIDERATION DATES                                                         | COMMITTEE ACTION  | REREFERRED TO COMM | DATE OUT |
|-----------------|------------|--------------|-----------------------------------------------------------------------------|-------------------|--------------------|----------|
| HB0011          | 1/17       | 1/25         |                                                                             | CONCUR            |                    | 1/28     |
| PAVLOVICH, BOB  |            |              | REPEALING SUNSET PROVISION FOR VETERANS' EMPLOYMENT PREFERENCE              |                   |                    |          |
| HB0024          | 1/24       | 1/30         |                                                                             | CONCUR AS AMENDED |                    | 2/15     |
| CODY, DOROTHY   |            |              | ALLOW CONSIDERATION OF AGE, MARITAL STATUS, AND RELIGION IN ADOPTIONS       |                   |                    |          |
| HB0025          | 1/21       | 1/30         |                                                                             | CONCUR            |                    | 2/06     |
| CODY, DOROTHY   |            |              | REQUIRE 72-HOUR RELINQUISHMENT PERIOD IN ADOPTIONS                          |                   |                    |          |
| HB0026          | 1/25       | 1/30         |                                                                             | CONCUR AS AMENDED |                    | 2/07     |
| CODY, DOROTHY   |            |              | REQUIRE HOMESTUDY AND COUNSELING IN PRIVATE PLACEMENT ADOPTIONS             |                   |                    |          |
| HB0043          | 1/18       | 1/24         |                                                                             | CONCUR AS AMENDED |                    | 1/25     |
| COBB, JOHN      |            |              | CLARIFY GRANDPARENT VISITATION RIGHTS FOR CHILDREN IN FOSTER CARE           |                   |                    |          |
| HB0069          | 1/18       | 1/30         |                                                                             | CONCUR AS AMENDED |                    | 2/05     |
| WHALEN, TIM     |            |              | REVISE ESTABLISHMENT, NUMBER, SALARY, ELECTION OF MUNICIPAL COURT JUDGES    |                   |                    |          |
| HB0071          | 1/28       | 2/06         |                                                                             | TABLED ON 02/18   |                    |          |
| STRIZICH, BILL  |            |              | REQUIRE COURTS TO ORDER FINANCIALLY ABLE INMATES TO PAY INCARCERATION COSTS |                   |                    |          |
| HB0072          | 1/29       | 2/07         |                                                                             | TABLED ON 02/26   |                    |          |
| RICE, JIM       |            |              | EXPEDITE CRIMINAL PROSECUTION                                               |                   |                    |          |
| HB0094          | 1/15       | 2/04         |                                                                             | TABLED ON 02/06   |                    |          |
| BROWN, JAN      |            |              | CLARIFY PROCEDURE FOR REPRINTING MCA                                        |                   |                    |          |
| HB0101          | 1/29       | 3/06         |                                                                             | CONCUR AS AMENDED |                    | 3/06     |
| RUSSELL, ANGELA |            |              | SERVE DUI SENTENCES IN SECURE FACILITIES OTHER THAN JAILS                   |                   |                    |          |
| HB0102          | 1/29       | 3/06         |                                                                             | CONCUR            |                    | 3/06     |
| RUSSELL, ANGELA |            |              | ALLOW MANDATORY DUI TREATMENT BY CERTIFIED CHEMICAL DEPENDENCY COUNSELORS   |                   |                    |          |

## MINUTES

### MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on January 30, 1991,  
at 10:00 a.m.

#### ROLL CALL

##### Members Present:

Dick Pinsoneault, Chairman (D)  
Bill Yellowtail, Vice Chairman (D)  
Bruce Crippen (R)  
Steve Doherty (D)  
Lorents Grosfield (R)  
Mike Halligan (D)  
John Harp (R)  
Joseph Mazurek (D)  
David Rye (R)  
Paul Svrcek (D)  
Thomas Towe (D)

Members Excused: Robert Brown (R)

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion  
are paraphrased and condensed.

##### Announcements/Discussion:

#### HEARING ON HOUSE BILL 24

##### Presentation and Opening Statement by Sponsor:

Representative Dorothy Cody, District 20, provided a short history of House Bills 24, 25, and 26. She said former Senator Tom Rasmussen had a bill in 1989 to get the Department of Family Services (DFS) into the adoption business. Representative Cody told the committee the adoption issue was studied and it was found that DFS had quit doing them because of a September, 1988 ruling, Wheeler v Department of Family Services.

Representative Cody stated she went to the Committee, asking them to kill Senator Rasmussen's bill, and proposed to draft a study resolution to address the issue of adoption in the state of Montana. She explained that the resolution was second on the list, but during Special Session the funds were given to education. Representative Cody advised the Committee that Valencia Lane, Staff

applies to direct adoptions, and Chapter 8 applies to private adoptions. Mr. Driscoll pointed out the requirement in the adoption code, that prospective parents must undergo a home study by DFS.

Closing by Sponsor:

Representative Cody closed on House Bills 24, 25, and 26. She repeated that this is a much bigger issue than anyone addressed in 1989. She told the Committee, "I am a mother and grandmother, and I believe this issue should be addressed this session". Representative Cody stated there needs to be more openness for birth mothers, and said she is looking at the issue with a more simplistic view than attorneys do.

Representative Cody commented that she knows there is work to be done, and she asked the Committee for their consideration of the bills. Chairman Pinsoneault assured Representative Cody that the Committee would work with her.

HEARING ON HOUSE BILL 69

Presentation and Opening Statement by Sponsor:

Representative Timothy Whalen, District 93, said HB 69 contains slight modifications to municipal courts, eliminating the population requirement of 10,000, and eliminating appeals to district court instead of retrying a case.

Proponents' Testimony:

Judge Larry Herman, Laurel City Judge, and prosecuting attorney, read from a prepared statement in support of the bill (Exhibit #3). Judge Herman also presented amendments to section 5 of the bill concerning clerk of court (Exhibit # ). He stated it would be more feasible if the clerk of court be established by ordinance, as right now city clerks of court are city clerks.

Judge Herman also provided testimony from Judge Stewart in Billings (Exhibit #4).

Bruce McCandless, City of Billings, said he believes HB 69 would be workable with the proposed amendments, and if records prepared by the court can be electronically recorded.

Opponents' Testimony:

Patricia Bradley, Montana Magistrates, read from prepared testimony in opposition to HB 69 (Exhibit #5). She stated 3-6-101, MCA is adequate, and that no city has asked for the legislation. Ms. Bradley added, "This appears to be special-interest legislation.", and said Judge Neil Travis of Livingston, and judges from Red Lodge and Billings also oppose this bill.

Questions From Committee Members:

Senator Halligan stated he did not understand how anyone could oppose this bill.

Senator Towe commented that it is true there is a real concern among non-lawyer justices of the peace that lawyers will take over.

Senator Harp stated he had the same fear, and said he was surprised that Alec Hanson, Montana League of Cities and Towns, did not ask about cost. Representative Whalen replied there was no fiscal note when the bill was presented in the House. He said the cost is dependent upon each municipality adopting the process.

Senator Harp commented that Montana has so many small communities who can't afford to hire attorneys to run these courts. He said he didn't hear people from the public saying they had been mistreated by non-lawyer justices of the peace. Representative Whalen replied that a separate bill carried by Representative Russell Fagg would eliminate all trial de novos. He stated a great deal of latitude is given trial judges concerning evidence, and that it is impossible to have that changed on an appeal. He explained that judges are needed who understand the law and will use discretion. Representative Whalen said he believes the bill is not soliciting a great deal of testimony. He stated he does have an article on Judge Eschler in Billings, who has thrown people in jail when she did not have the right to do so. He said he liked Judge Eschler, but there is a need for balance in the rights of the people.

Closing by Sponsor:

Representative Whalen told the Committee the bill is optional. He said there is incentive to the bill and that it might employ more attorneys, but he is more interested in balance of rights. He reminded the Committee the bill applies only to city courts.

EXECUTIVE ACTION ON SENATE BILL 170Motion:Discussion:

Valencia Lane explained that the Department of Institutions asked for the amendments which also set up an account to pay certain kinds of court costs. She stated that if funds are not available from this account, the general fund then pays these court costs.

Amendments, Discussion, and Votes:

Senator Towe made a motion that the proposed amendments be approved (Exhibit # 6.). The motion carried unanimously.

ROLL CALL

SENATE JUDICIARY COMMITTEE

52~~nd~~ LEGISLATIVE SESSION -- 198~~8~~

Date 30 Jan 9

| NAME             | PRESENT | ABSENT | EXCUSED |
|------------------|---------|--------|---------|
| Sen. Pinsoneault | ✓       |        |         |
| Sen. Yellowtail  | ✓       |        |         |
| Sen. Brown       | ✓       |        |         |
| Sen. Crippen     | ✓       |        |         |
| Sen. Doherty     | ✓       |        |         |
| Sen. Grosfield   | ✓       |        |         |
| Sen. Halligan    | ✓       |        |         |
| Sen. Harp        | ✓       |        |         |
| Sen. Mazurek     | ✓       |        |         |
| Sen. Rye         | ✓       |        |         |
| Sen. Svrcek      | ✓       |        |         |
| Sen. Towe        | ✓       |        |         |
|                  |         |        |         |
|                  |         |        |         |
|                  |         |        |         |

Each day attach to minutes.



44567  
30 Jan 71

# City of Laurel

LAUREL, MONTANA 59044

CITY COURT

P.O. BOX 10

PHONE: 628-8791

TESTIMONY HOUSE BILL 69

DEPARTMENT

LARRY D. HERMAN

My name is Larry Herman. I am the incumbent city judge of the City of Laurel. I am a former mayor, alderman, and city attorney of the City of Laurel. I am a practicing attorney and the vice chairman of the commission on courts of limited jurisdiction. I am appearing in support of House Bill 69.

The municipal court is not a new court. It was first provided for by the legislature in 1935 as a court of record in cities. There is presently only one municipal court established in the state which is in Missoula. The cities have generally not adopted the municipal court because of the costs that were associated with maintaining a court reporter. Also with the passage of the 1972 constitution there was some concern whether or not the appeal from the municipal court was as trial anew. This bill addresses these problems. The passage of the bill will prove to be beneficial to the cities and their respective counties and district courts.

The problem associated with the cost of a court reporter for limited courts of record has been eliminated with the advent of the tape recorder and other electronic media. A record can now be maintained in the municipal court by means of a relatively inexpensive electronic recorder. This is the method that is now being used in the Missoula Municipal court.

The problem associated with the appeal from a limited court of record to the district court has been addressed in this bill. The record on appeal will be confined to the record and questions of law and not tried a second time in the district court. The bill provides the district court with sufficient latitude to provide justice and could if the appeal warranted it order a new trial. The district court would be able to hear appeals on orders of the municipal court. Under present law the only recourse is to seek a writ of supervisory control from the supreme court or a writ of mandamus.

By confining the appeal to the record, the municipal court will not be used as a discovery court and then appealed to the district court to be tried anew.

The saving to the cities will be in the elimination of the additional expenses incurred in a trial anew, that is excessive police hours to attend trial (usually overtime), city attorney or prosecutors time to try cases a second time, public defender hours to try a case a second time, witness fees, and jury costs. The district court's case load will be eased because the pressure to try misdemeanors within 6 months will not clog the dockets. The district court will be able to dispose of the appeals from the municipal court and devote more time to pressing felony and civil matters.

Under this bill the cities as they grow will be able to increase the number of judges needed to operate the municipal court. Presently the cities can have only one city or municipal judge. This allows for growth and a more efficient court in the large cities. The courts in some cities are under heavy pressure due to their case loads, this in turn places pressure upon the district courts. This bill will save time for city/municipal judges, district court judges, prosecutors, and public defenders.

This bill eliminates the provision that the clerk of the city must be the clerk

of court. This provision had applied to both city and municipal courts. It certainly was not a duty which most city clerks wanted in light of all of their other duties. However the bill does not prohibit a city clerk from being the clerk of the court.

This bill does not increase or decrease the jurisdiction of the municipal courts. It remains the same as city courts. The difference being that the municipal court being a court of record and is appealable on the record. Nor does this bill change the qualifications for a municipal court judge.

Local government, in particular in the more densely populated counties, need a means of operating their courts in a more economical manner and should not be required to wait 5 years or even 2 years when an immediate result can be had under this bill. The establishment of the municipal court under this bill will provide immediate relief to the cities with a high volume case load and to their respective counties and district courts through the saving of pure dollars and cents. This bill makes good sense.

This bill makes good dollars and cents for both the cities and their respective counties. I would urge this committee to give it a close review in light of the savings by the elimination of man hours of the police, prosecuting attorneys, and district court judges needed in handling two trials instead of one.

Keep in mind that this bill does not mandate a municipal court, but provides a means a city may use to reduce the costs of its courts and the appeals to the district court. This bill does make good sense, and I urge this committee to recommend its passage and approval.



**CITY OF BILLINGS**  
**M O N T A N A**

**CITY COURT**

Second Floor — City Hall  
Phone 657-8490

GAYLE A. STEWART  
City Judge

EXHIBIT  
HB 69  
30 Jan 91

To: Senate Judiciary Committee  
From: Judge Gayle A. Stewart, Billings, MT 59101  
Re: House Bill No. 69  
Date: January 28, 1991

This memorandum is in support of House Bill No. 69; "AN ACT REVISING PROVISIONS REGARDING THE ESTABLISHMENT, NUMBER, SALARY AND ELECTION OF MUNICIPAL COURT JUDGES AND THE ADMINISTRATION OF AND APPEAL FROM MUNICIPAL COURTS: AMENDING SECTIONS 3-6-101, 3-6-102, 3-6-201, 3-6-203 AND 3-6-301 MCA.

As the City Court Judge of Billings, Montana, I would support House Bill # 69 for the following reasons:

First, Billings City Court has an enormous volume of cases filed and consequently we conduct a great number of trials. At present time, all defendants are entitled to a new trial in District Court upon appeal, on any misdemeanor charge.

Obviously, there is a great expense attached to the appeal process as it now stands. The City Court must type the appeal and transmit the appeal to the County District Court.

Witness fees and jury costs and the inherent cost of trials are expenses the City must bear on any misdemeanor trial. However, when a case is appealed to the County District Court, the District Court must bear the same expense again, and the City is rarely, if ever, reimbursed for its costs.

Presently, there appears to be a great deal of abuse in the appeal process. Defendants are not appearing for their trials, in which case, a trial is held in absentia and witnesses are called by the City or in other cases Defendants may appear and not present any case, but still may appeal, thereby using the trial in City Courts of Limited Jurisdiction as a discovery process.

Once the appeal has been transmitted, there is also a fair amount of delay before the misdemeanor cases are tried in District Court and sometimes they fall through the cracks and are lost in the process.

The District Court Judges are also unhappy with the appeal process as it is. Misdemeanors clog their calendars and instead of hearing the civil and felony trials they should be hearing, the District Court Judges are hearing DUI's and Careless Driving cases, and that does not encompass the amount of taxpayer's money it is costing to conduct these misdemeanor trials in District Court. Our present appeal process also encourages forum shopping - if a defendant doesn't like what one Judge does, then he'll get another.

Remember, we are speaking of misdemeanor cases, many are traffic cases which do not nor would they likely carry any jail time. If a Defendant's appeal has merit, then so be it, under House Bill No. 69, the Defendant would continue to have his right of appeal on record relating to questions of law. That is how it should be. It seems unjustified to spend the amounts of time and money we are spending on our current appeal process and House Bill No. 69 appears to be a solution to the problem.

House Bill No. 69 is elective to cities which would like to establish a Municipal Court, it is not mandatory, therefore, non lawyer Judges should not feel that their positions are at stake since under the proposed bill, cities choose whether or not they would become a Municipal Court.

Thank you for your time and attention to this matter.

pl

EXHIBIT #3  
30 Jan 91  
HB 69

# Montana Magistrates Association

January 30, 1991 Senate Judiciary Committee

HB 69, A bill for an act to revise provisions regarding the establishment of municipal court.

Testimony by Pat Bradley, for the Montana Magistrates Association

Mr. Chairman and Committee members:

Sec. 3-6-101 MCA is adequate in its present form. It gives to cities of 10,000 population or more the option of establishing a municipal court if they wish to do so. Thus far, only Missoula, of Montana's major cities has done so.

The reason that other major cities have not may be that the present court structure is working well, and at costs that are affordable.

No city that we know of has asked for this legislation. It appears to be only of special interest to the author of the bill.

The primary reason for this bill, say the sponsors, is to eliminate trial de novo on appeal to district court. New section 6(2) calls for an electronic recording or stenographic transcription of a case tried, and the appeal is confined to review of the record and questions of law subject to the supreme courts rulemaking and supervisory authority.

This also could be done with appeals from justice and city court by changing the law to allow these courts to use electronic recordings, such as justicecourts do now in small claims matters which are infrequently appealed to district court.

The MMA contends as nonsense the sponsors' statement that the defendant in a trial situation is not protected in matters of Rules of Evidence and civil procedure when presided over by a non-attorney judge. All judges of courts of limited jurisdiction have since 1973 been receiving continuing legal education in all areas of law, especially Rules of Evidence and civil procedure. Judges attend two schools each year of intensive training and are experienced and competent to hear all criminal and civil trials. Judges must be certified to sit on the bench, and receive their certification from the Supreme Court after having passed a rigid testing program. Every legislative session, the courts of limited jurisdiction are given more more jurisdiction, and judges rise to accept it.

The judges say that there are not many appeals considering their large case loads, but no statistics have been gathered, an oversight that they are working to correct. One judge told me that many appeals could be eliminated if it was required that the defendant actively participate in his trial rather than use it as a discovery proceeding. Another judge said many appeals are filed after sentencing.

We submit that this is unnecessary and special interest legislation. Our present court system works well and in a competent, solvent and

DATE \_\_\_\_\_

## Senate Judiciary

## VISITORS' REGISTER

| VISITORS' REGISTER |                                   | Check One       |                |
|--------------------|-----------------------------------|-----------------|----------------|
| NAME               | REPRESENTING                      | BILL #          | Support Oppose |
| W. Gillkey         | Dept. Family Services             | HB 25, 26       | X              |
| W. H. Harnett      | Harrel City Court                 | 69              | X              |
| ETTY BAY           | D.F.S                             | 24, 26<br>25    | X              |
| Ed Bradford        | Self                              | 24, 25,<br>26   | X              |
| F. BRADLEY         | MT MAGISTRATES ASSN               | HB 69           |                |
| Mark Ricks         | LDS Social Service                | HB 24<br>25, 26 | X              |
| W. McCandless      | CITY OF BILLINGS                  | HB 69           |                |
| Ida Jagerstrom     | Lutheran Social Services          | HB 24<br>26     | X              |
| William McKibben   | Catholic Social Services          | 24, 25,<br>26   | X              |
| W. Brown           | State Rep.                        | HB 24           | X              |
| Bill Dunsen        | Catholic Social Service           | HB 24           | X              |
| Rebecca Jones      | Shodair (Montana Children's Home) | HB 24           | X              |
| Inter-Church       | Montana Right to Life             | HB 24           | X              |
| Bill Dunsen        | Catholic Social Services          | HB 26           |                |
| W. T. Tamm         | MT Intercountry Adoption          | HB 25           | X              |
| "                  | "                                 | HB 26           | X              |

## MINUTES

### MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on February 4, 1991,  
at 10:20 a.m.

#### ROLL CALL

**Members Present:**

Dick Pinsoneault, Chairman (D)  
Bill Yellowtail, Vice Chairman (D)  
Robert Brown (R)  
Bruce Crippen (R)  
Steve Doherty (D)  
Lorents Grosfield (R)  
Mike Halligan (D)  
Joseph Mazurek (D)  
David Rye (R)  
Paul Svrcek (D)  
Thomas Towe (D)

**Members Excused:** John Harp (R)

**Staff Present:** Valencia Lane (Legislative Council).

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Announcements/Discussion:** Chairman Pinsoneault announced that a subcommittee comprised of himself, Senators Towe, Grosfield, and Stimatz, Don Judge, and another employer representative had been formed to study SB 31 and SB 138.

Joe Roberts, lobbyist, Don't Gamble with the Future, invited members of the Committee to hear Jeff Bloomberg, Lawrence County State's Attorney, South Dakota, concerning South Dakota law enforcement experience with gambling in Deadwood. He advised the Committee Mr. Bloomberg would be at Jorgenson's for breakfast at 7 a.m. on Wednesday, February 6, 1991.

EXECUTIVE ACTION ON HOUSE BILL 69Motion:Discussion:

Valencia Lane explained that the amendments propose inserting "must be established by ordinance", on page 3, line 25, following Clerk of Court.

Senator Yellowtail suggested that following "The" on page 3, line 22, "position of" be inserted, and that following "court" "judge shall appoint a" be stricken.

Amendments, Discussion, and Votes:

Senator Towe made a motion that the amendments, as discussed, be approved. The motion carried unanimously.

Recommendation and Vote:

Senator Towe made a motion that HB 69 BE CONCURRED IN AS AMENDED. The motion carried 8-4 in a roll call vote (attached). Senator Towe will carry the bill.

EXECUTIVE ACTION ON SENATE BILL 58Motion:

Senator Yellowtail made a motion that the amendments be approved (Exhibit #4).

Discussion:

Senator Yellowtail explained that a compromise was arrived at to remove subsection 5 on page 2, and that the final costs will be borne by the arresting agency, except for cities and towns.

Senator Yellowtail stated that all material on page 3, subsection 3 remains so that costs for a fugitive from justice from another state are borne by the state or origin.

Senator Towe asked who pays if a crime is committed in Billings and the criminal goes to Columbus where he or she is arrested. Senator Yellowtail replied that if the criminal is arrested under state law, the county pays.

Valencia Lane explained that existing language addresses medical costs on page 2, line 8, beginning with "except", and that



ROLL CALL

SENATE JUDICIARY

COMMITTEE

52<sup>nd</sup> LEGISLATIVE SESSION -- 1991

Date 4 Feb 91

| NAME             | PRESENT | ABSENT | EXCUSED |
|------------------|---------|--------|---------|
| Sen. Pinsoneault | ✓       |        |         |
| Sen. Yellowtail  | ✓       |        |         |
| Sen. Brown       | ✓       |        |         |
| Sen. Crippen     | ✓       |        |         |
| Sen. Doherty     | ✓       |        |         |
| Sen. Grosfield   | ✓       |        |         |
| Sen. Halligan    | ✓       |        |         |
| Sen. Harp        | ✓       |        |         |
| Sen. Mazurek     | ✓       |        |         |
| Sen. Rye         | ✓       |        |         |
| Sen. Svrcek      | ✓       |        |         |
| Sen. Towe        | ✓       |        |         |
|                  |         |        |         |
|                  |         |        |         |
|                  |         |        |         |

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 4, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 69 (third reading copy -- blue), respectfully report that House Bill No. 69 be amended and as so amended be concurred in:

1. Page 3, line 22.

Following: "The"

Insert: "position of"

Following: "court"

Strike: "judge shall appoint a"

2. Page 3, line 24.

Following: "court"

Insert: "must be established by ordinance"

Signed: Richard Pinsonneault  
Richard Pinsonneault, Chairman

PB 4/4/91  
Amd. Coord.

JB 2-4-91  
Sec. of Senate

## 1 HOUSE BILL NO. 69

2 INTRODUCED BY WHALEN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROVISIONS  
5 REGARDING THE ESTABLISHMENT, NUMBER, SALARY AND ELECTION OF  
6 MUNICIPAL COURT JUDGES AND THE ADMINISTRATION OF AND APPEAL  
7 FROM MUNICIPAL COURTS; AMENDING SECTIONS 3-6-101, 3-6-102,  
8 3-6-201, 3-6-203, AND 3-6-301, MCA; AND PROVIDING AN  
9 EFFECTIVE DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 3-6-101, MCA, is amended to read:

13 "3-6-101. Establishment of the court. (1) ~~All cities in~~  
14 ~~the state of Montana with a population of 10,000 or more,~~  
15 ~~according to the last federal census,~~ A city WITH A  
16 POPULATION OF 4,000 OR MORE, ACCORDING TO THE LAST FEDERAL  
17 CENSUS, may have a court, known as the municipal court of  
18 the city of (designating the name of the city) of the state  
19 of Montana. The court ~~shall~~ must be a court of record. The  
20 municipal court shall assume continuing jurisdiction over  
21 all pending city court cases in the city in which the  
22 municipal court is established.

23 (2) ~~The provisions of this chapter apply only after a~~  
24 city may have a municipal court only if the governing body  
25 of the city ~~has elected~~ elects by a two-thirds TWO-THIRDS

1 majority vote to adopt ~~them~~ the provisions of this chapter  
2 by ordinance and, in the ordinance, ~~has provided~~ provides  
3 the manner in which and time when the municipal court is to  
4 be established and is to assume continuing jurisdiction over  
5 all pending city court cases. IF A CITY JUDGE IS NOT AN  
6 ATTORNEY AND HIS OFFICE IS ABOLISHED BECAUSE A MUNICIPAL  
7 COURT IS ESTABLISHED, THE ORDINANCE MUST PROVIDE THAT THE  
8 TIME WHEN THE ESTABLISHMENT OF THE MUNICIPAL COURT TAKES  
9 EFFECT IS THE DATE ON WHICH THE MUNICIPAL COURT JUDGE  
10 ELECTED AT THE NEXT ELECTION HELD UNDER 3-6-201 BEGINS HIS  
11 TERM OF OFFICE. The ordinance must be consistent with the  
12 provisions of this chapter."

13 Section 2. Section 3-6-102, MCA, is amended to read:

14 "3-6-102. Abolition of city court. (1) In cities in  
15 which a municipal court is established, the office of city  
16 judge is hereby abolished.

17 (2) A EXCEPT AS PROVIDED IN 3-6-101(2), A city judge  
18 whose office is abolished shall serve as a municipal court  
19 judge in the same city in which he served as city judge for  
20 the remainder of his term and until the office of municipal  
21 court judge is filled by election, as provided under 3-6-201  
22 and 3-6-202."

23 Section 3. Section 3-6-201, MCA, is amended to read:

24 "3-6-201. Election Number of judges -- election -- term  
25 of office. (1) The governing body of a city shall determine

1 by ordinance the number of judges required to operate the  
2 municipal court.

3 ~~(1)~~ (2) ~~One-judge-of-each~~ A municipal court judge must  
4 ~~shall~~ be elected at the general city election, as provided  
5 ~~in 13-1-104(2).~~ The judge's term ~~shall-commence~~ commences on  
6 the first Monday in January following the election. The  
7 judge shall hold office for the term of 4 years and until  
8 his successor is elected and qualified.

9 ~~(2)~~ (3) ~~All EXCEPT AS PROVIDED IN SUBSECTION (2), ALL~~  
10 elections of municipal court judges are governed by the laws  
11 applicable to the election of ~~nonpartisan-city-officials~~  
12 district court judges."

13 **Section 4.** Section 3-6-203, MCA, is amended to read:

14 "3-6-203. Salary. The salary of the municipal court  
15 judge ~~shall must~~ be set by city ordinance or resolution and  
16 ~~shall-be is~~ payable monthly by the city treasurer. Actual  
17 and necessary expenses for the municipal court judge ~~shall~~  
18 ~~be-the travel are~~ expenses, as defined and provided in  
19 2-18-501 through 2-18-503, incurred in the performance of  
20 his official duties."

21 **Section 5.** Section 3-6-301, MCA, is amended to read:

22 "3-6-301. Clerk of the court -- administrative  
23 expenses. The POSITION OF city municipal court judge-shall  
24 ~~appoint-a~~ clerk of the city-in-which-said-court--is--located  
25 ~~shall--be-ex-officio-clerk-of-such court~~ MUST BE ESTABLISHED

1 BY ORDINANCE. The governing body of the city shall set the  
2 salary of the clerk and provide for other necessary expenses  
3 that may be incurred in operating the court."

4 NEW SECTION. Section 6. Appeal to district court --  
5 record on appeal. (1) A party may appeal to district court  
6 from a municipal court judgment or order. The appeal is  
7 confined to review of the record and questions of law,  
8 subject to the supreme court's rulemaking and supervisory  
9 authority.

10 (2) The record on appeal to district court consists of  
11 an electronic recording or stenographic transcription of a  
12 case tried, together with all papers filed in the action.

13 (3) The district court may affirm, reverse, or amend  
14 any appealed order or judgment and may direct the proper  
15 order or judgment to be entered or direct that a new trial  
16 or further proceeding be had in the court from which the  
17 appeal was taken.

18 NEW SECTION. Section 7. Codification instruction.  
19 [Section 6] is intended to be codified as an integral part  
20 of Title 3, chapter 6, and the provisions of Title 3,  
21 chapter 6, apply to [section 6].

22 NEW SECTION. Section 8. Effective date. [This act] is  
23 effective July 1, 1991.

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